

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

WIAV NETWORKS, LLC, a Virginia
limited liability company,

Plaintiff,

vs.

3COM CORPORATION, a Delaware
company; et al.,

Defendants.

Case No. 5:09-cv-00101-DF

(Jury Trial Demanded)

**3COM CORPORATION'S FIRST AMENDED ANSWER AND COUNTERCLAIMS TO
WIAV NETWORKS, LLC'S AMENDED COMPLAINT**

3Com Corporation ("3Com") files this First Amended Answer and Counterclaims to the Amended Complaint for patent infringement filed by WIAV Networks, LLC ("Plaintiff" or "WIAV") as follows:

NATURE OF THE ACTION

1. 3Com admits that the copy of United States Patent No. 6,480,497 (the "497 Patent") attached to Plaintiff's Complaint as Exhibit A on its face is titled "Method and Apparatus for Maximizing Data Throughput in a Packet Radio Mesh Network," and that the copy of United States Patent No. 5,400,338 (the "338 Patent") attached to Plaintiff's Complaint as Exhibit B on its face is titled "Parasitic Adoption of Coordinate-Based Addressing by Roaming Node." 3Com lacks sufficient knowledge and information to admit or deny the remaining allegations in this paragraph, and therefore denies them.

2. To the extent the allegations in this paragraph are directed to 3Com, 3Com denies them. To the extent the allegations in this paragraph are directed to entities other than 3Com,

3Com lacks sufficient knowledge and information to admit or deny the allegations, and therefore denies them.

3. To the extent the allegations in this paragraph are directed to 3Com, 3Com admits that Plaintiff purports to seek damages and denies the remaining allegations. To the extent the allegations in this paragraph are directed to entities other than 3Com, 3Com lacks sufficient knowledge and information to admit or deny the allegations, and therefore denies them.

THE PARTIES

4. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

5. 3Com admits the allegations in this paragraph.

6. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

7. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

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38. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

JURISDICTION AND VENUE

39. 3Com admits that Plaintiff's Complaint purports to arise out of United States patent law and admits that this Court therefore has subject matter jurisdiction. To the extent the remaining allegations in this paragraph are directed to 3Com, 3Com denies them. To the extent the remaining allegations in this paragraph are directed to entities other than 3Com, 3Com lacks sufficient knowledge and information to admit or deny the allegations, and therefore denies them.

40. To the extent the allegations in this paragraph are directed to 3Com, 3Com admits that it is subject to personal jurisdiction in the Eastern District of Texas, 3Com lacks sufficient knowledge and information to admit or deny whether venue is proper in the Eastern District of Texas and therefore denies this allegation, and 3Com denies the remaining allegations. To the extent the allegations in this paragraph are directed to entities other than 3Com, 3Com lacks sufficient knowledge and information to admit or deny the allegations, and therefore denies them.

41. To the extent the allegations in this paragraph are directed to 3Com, 3Com admits that it is subject to personal jurisdiction in the Eastern District of Texas and denies the remaining allegations. To the extent the allegations in this paragraph are directed to entities other than 3Com, 3Com lacks sufficient knowledge and information to admit or deny the allegations, and

therefore denies them.

COUNT I

INFRINGEMENT OF THE '497 PATENT

42. 3Com incorporates by reference its responses to each of the allegations in paragraphs 1 through 41 above.

43. 3Com admits that the copy of the '497 Patent attached to Plaintiff's Complaint as Exhibit A on its face specifies an issue date of November 12, 2002. 3Com lacks sufficient knowledge and information to admit or deny the remaining allegations in this paragraph, and therefore denies them.

44. 3Com denies the allegations in this paragraph.

45. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

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77. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

COUNT II

INFRINGEMENT OF THE '338 PATENT

78. 3Com incorporates by reference its responses to each of the allegations in paragraphs 1 through 77 above.

79. 3Com admits that the copy of the '338 Patent attached to Plaintiff's Complaint as Exhibit B on its face specifies an issue date of March 21, 1995. 3Com lacks sufficient knowledge and information to admit or deny the remaining allegations in this paragraph, and therefore denies them.

80. 3Com denies the allegations in this paragraph.

81. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

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111. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

112. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

113. 3Com lacks sufficient knowledge and information to admit or deny the allegations in this paragraph, and therefore denies them.

PRAYER FOR RELIEF

114. 3Com denies that Plaintiff is entitled to any relief.

JURY DEMAND

115. 3Com admits that Plaintiff has demanded a trial by jury of all matters to which Plaintiff is entitled to a trial by jury pursuant to Fed. R. Civ. P. 38.

GENERAL DENIAL

116. 3Com further denies any of the allegations in Plaintiff's Complaint which are not specifically admitted herein.

AFFIRMATIVE DEFENSES

FIRST SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Failure To State A Claim Upon Which Relief Can Be Granted)

117. The Complaint fails to state a claim upon which relief can be granted against 3Com.

SECOND SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Noninfringement)

118. 3Com has not directly infringed any claim of the '497 Patent or the '338 Patent, has not contributed to infringement of any claim of the '497 Patent or the '338 Patent, and has not induced infringement of any claim of the '497 Patent or the '338 Patent.

THIRD SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Invalidity)

119. Each claim of the '497 Patent and the '338 Patent is invalid for failure to meet one or more of the conditions of patentability specified in Title 35 of the United States Code, including but not limited to 35 U.S.C. §§ 101, 102, 103, and/or 112.

FOURTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Equitable Defenses)

120. Plaintiff is barred from asserting the '497 Patent and the '338 Patent, and/or from obtaining any damages or other forms of relief, pursuant to the equitable doctrines of laches, prosecution laches, waiver, and/or estoppel.

FIFTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Insufficient Notice)

121. Plaintiff failed to provide adequate notice to 3Com of alleged patent infringement and thus is barred under 35 U.S.C. § 287 from recovering damages.

SIXTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Time Limitation on Damages)

122. Plaintiff is barred under 35 U.S.C. § 286 from recovering damages for any alleged infringement committed more than six years prior to the filing of its Complaint.

SEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Preclusion from Recovering Costs Under 35 U.S.C. § 288)

123. To the extent that any asserted claim of the '497 Patent or the '338 Patent is held invalid, Plaintiff must be precluded under 35 U.S.C. § 288 from recovering costs related to this action.

EIGHTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Government Sales)

124. To the extent that certain products accused of infringing the '497 Patent or the '338 Patent are used and/or manufactured for the United States Government, Plaintiff's claims against 3Com with respect to such products may not be pursued in this Court and are subject to other limitations pursuant to 28 U.S.C. § 1498.

NINTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Collateral Estoppel and/or Judicial Estoppel)

125. Plaintiff is barred pursuant to the doctrines of collateral estoppel and/or judicial estoppel from re-asserting and/or altering positions that were previously the subject of its own arguments and/or rulings adverse to the company.

TENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(License, Exhaustion, and Implied License)

126. Plaintiff is barred from asserting the '497 Patent and the '338 Patent, and/or from obtaining any damages or other forms of relief, because of license, exhaustion, and/or implied license.

ELEVENTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(Non-Exceptional Case)

127. Plaintiff cannot prove that this is an exceptional case justifying an award of

attorneys' fees against 3Com pursuant to 35 U.S.C. § 285.

TWELVTH SEPARATE AND DISTINCT AFFIRMATIVE DEFENSE

(No Injunctive Relief)

128. Plaintiff is not entitled to an injunction because Plaintiff has an adequate remedy at law.

COUNTERCLAIMS

129. Defendant and Counterclaim Plaintiff 3Com Corporation ("3Com") pleads the following counterclaims against Plaintiff and Counterclaim Defendant WIAV Networks, LLC ("WIAV"):

THE PARTIES

130. 3Com is a Delaware corporation with its principal place of business at 350 Campus Drive, Marlborough, Massachusetts 01752.

131. Upon information and belief, WIAV is a Virginia limited liability company with its principal place of business at 11289 Stones Throw Drive, Reston, Virginia 20194.

JURISDICTION AND VENUE

132. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331, 1338, and/or 1367.

133. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because WIAV has subjected itself to this jurisdiction by filing its Complaint.

CAUSES OF ACTION

134. In its Complaint, WIAV has alleged that it is the owner of United States Patent Nos. 6,480,497 (the "'497 Patent") and 5,400,338 (the "'338 Patent") and has asserted that 3Com infringes both patents. 3Com lacks information and belief as to whether WIAV is the owner of the '497 Patent and the '338 Patent, and on that ground denies WIAV's allegation of ownership. 3Com further denies that it has infringed any claim of the '497 Patent or the '338 Patent and

contends that both patents are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

FIRST COUNTERCLAIM

(Declaratory Judgment of Noninfringement)

135. 3Com repeats and realleges the responses and allegations set forth in paragraphs 1 through 134 as if fully set forth herein.

136. There is an actual and continuing justiciable controversy between 3Com and WIAV regarding the alleged infringement and validity of the '497 Patent and the '338 Patent.

137. A judicial declaration is necessary so 3Com may ascertain its rights regarding its alleged infringement of the '497 Patent and the '338 Patent.

138. 3Com has not infringed any valid claim of the '497 Patent or the '338 Patent.

SECOND COUNTERCLAIM

(Declaratory Judgment of Invalidity)

139. 3Com repeats and realleges the responses and allegations set forth in paragraphs 1 through 138 as if fully set forth herein.

140. There is an actual and continuing justiciable controversy between 3Com and WIAV regarding the alleged infringement and validity of the '497 Patent and the '338 Patent.

141. A judicial declaration is necessary so 3Com may ascertain its rights regarding the validity of the '497 Patent and the '338 Patent.

142. The asserted claims of the '497 Patent and the '338 Patent are invalid under 35 U.S.C. §§ 101, 102, 103, and/or 112.

PRAYER FOR RELIEF

WHEREFORE, 3Com respectfully requests that this Court enter judgment against WIAV by awarding the following relief:

A. The dismissal of WIAV's Complaint with prejudice, granting of 3Com's

affirmative defenses, and denial of each request for relief made by WIAV;

B. A declaration in favor of 3Com that:

1. None of the claims of the '497 Patent or the '338 Patent are infringed by 3Com; and
2. The asserted claims of the '497 Patent and the '338 Patent are invalid;

C. An award to 3Com of compensatory damages on its counterclaims, according to proof at trial;

D. A declaration that this case qualifies as exceptional within the meaning of 35 U.S.C. § 285 and that 3Com be awarded attorneys' fees, costs, and expenses that it incurs in prosecuting this action; and

E. Such other and further relief as this Court deems just and proper.

JURY DEMAND

3Com demands a trial by jury as to all issues so triable.

DATED: April 28, 2010

Respectfully submitted,

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By: /s/ William J. Cornelius

WILLIAM J. CORNELIUS
State Bar No. 04834700

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Facsimile: (925) 403-0900

CERTIFICATE OF SERVICE

The undersigned hereby certifies that all counsel of record are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on April 28, 2010.

/s/ William Cornelius
WILLIAM CORNELIUS